STATE OF MICHIGAN

COURT OF APPEALS

FRANK HARRY SULSKIS, Plaintiff-Appellee,	UNPUBLISHED June 23, 2009
v	No. 284757 Alger Circuit Court
RICHARD SCOTT VAN EFFEN, Defendant-Appellant.	LC No. 07-004597-NI

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order denying his motion for summary disposition based on governmental immunity, MCR 2.116(C)(7). We reverse and remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument. MCR 7.214(E).

This case arises from an automobile accident causing personal injury. The facts are not in dispute. Defendant is a Michigan State Police Trooper. He turned left in front of the vehicle in which plaintiff was riding, and plaintiff was injured. Defendant admitted that he failed to yield the right-of-way to the other driver, saying he simply did not see the vehicle. There is no evidence that inclement weather, excessive speed, or any other such factor contributed to the accident. Although apparently there were no vision obstructions in either direction, defendant for whatever reason did not see the other vehicle.

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Similarly, the applicability of governmental immunity is a question of law that is reviewed de novo on appeal. *Herman v Detroit*, 261 Mich App 141, 143; 680 NW2d 71 (2004).

Under MCL 691.1407(2), an officer or employee of a governmental agency who is acting within the scope of his authority and engaged in carrying out a governmental function is immune from liability for negligence unless his conduct amounts to gross negligence that is the proximate cause of the injury or damage. For the purpose of employee immunity, gross negligence is conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results. MCL 691.1407(7)(a); *Costa v Community Emergency Med Serv, Inc*, 475 Mich 403, 411; 716 NW2d 236 (2006). The definition of gross negligence in the governmental immunity act suggests a willful disregard of precautions or measures to attend to safety and a "singular

disregard for substantial risks." *Tarlea v Crabtree*, 263 Mich App 80, 90; 687 NW2d 333 (2004). Although the reasonableness of an actor's conduct under the standard is generally a question for the factfinder, if reasonable minds could not differ, given the evidence presented, then the motion for summary disposition should be granted. *Jackson v Saginaw County*, 458 Mich 141, 146; 580 NW2d 870 (1998). "[E]vidence of ordinary negligence does not create a material question of fact concerning gross negligence. Rather, a plaintiff must adduce proof of conduct 'so reckless as to demonstrate a substantial lack of concern for whether an injury results.'" *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999) (citation omitted).

The trial court erred in this case by finding that the evidence could allow a jury to conclude that defendant acted with gross negligence. There was simply no evidence that defendant was subject to anything more than ordinary distractions. He was not speeding and he signaled the turn; nothing shows that he was driving with a singular disregard for substantial risks. *Tarlea*, *supra*. Nor does plaintiff allege any grossly negligent conduct; plaintiff's allegations are the same as those he originally used in support of his claim for ordinary negligence. Gross negligence requires something more. *Maiden*, *supra*. The trial court stated that defendant's lack of any explanation as to how the accident happened created allowable inferences from which the jury could conclude that "he must have been doing something else." But there is no evidence to support such an inference. Even if the jury could reasonably have inferred that defendant was drinking coffee or using the radio, nothing supports an inference that such inattention on a basically empty stretch of road rose to the level of a reckless disregard for substantial risks. A jury would only be guessing at what must have happened that day. Mere speculation or conjecture is insufficient to establish reasonable inferences of causation. *Skinner v Square D Co*, 445 Mich 153, 164; 516 NW2d 475 (1994).

We reverse and remand for further proceedings consistent with this opinion.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jane E. Markey